IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2627 OF 2005

Mr.Fakhruddin V.Chinikamwala
& Ors. ..Petitioners.

V/s.

Zehrabai Ahmed Ali Chinikamwala
& Ors. ..Respondents.

Mr.A.S.Khandeparkar for petitioners.

Mr.A.P.Mundargi with Subodh Desai for Respondent No.1.

Mrs.M.M.Deshmukh, APP for State.

CORAM: A.M.KHANWILKAR,J

DATE : DECEMBER 19, 2005.

P.C. :

1. Heard counsel for the parties. Perused the relevant documents including Judgment passed by the courts below.

2. In my opinion, no fault can be found with the direction issued by the lower court to hand over keys to the respondent No.1 as the same were procured from the respondent No.1 by the police during the course of investigation. Counsel for the petitioners however, submits that handing over keys to respondent No.1 would tantamount to delivery of possession of the premises. It is not necessary for this court to

go into question whether the legal possession of the premises was with the respondent No.1 at the relevant time, which will have to be resolved in the Civil Proceedings between the parties. Argument of the petitioners that the respondent No.1 should not be permitted to enjoy the premises or to create third party interest in the said premises till the disposal of the Civil Proceedings between the parties; This grievance will have to be raised before the Civil Court which in turn will be called upon to consider the said issue and therefore, the same cannot be answered in the present proceedings. In other words, all contentious issues between the parties pending in the Civil Proceedings which will arise from the Civil Proceedings are left open to be considered by that court on its own merit in accordance with the law. It will be open to the petitioners to apply for such relief including of appointment of court receiver in the said civil proceedings, which request cannot be entertained in the present matter. All the questions are left open. Petition disposed of on the above terms.

3. In the fact situation of the present case, it would be in the interest of justice and appropriate that the civil proceedings pending between the

parties are decided expeditiously preferably by end of December, 2006. Parties shall extend necessary cooperation for early disposal of the said civil proceedings.

4. At this stage counsel for the petitioners submits that interim protection granted during pendency of petition be continued to enable the petitioners to seek appropriate direction against the respondent No.1 in the civil proceedings. That request cannot be acceded to. It will be a different matter if the petitioners were to persuade civil court to injunct the respondent No.1 from occupying premises or disposing of the same in any manner whatsoever during the pendency of the civil proceedings. That question will have to be considered if such application is preferred before the civil court on its own merit in accordance with law.